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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.133 OF 2007
IN
INSOLVENCY NOTICE NO.154 OF 2007

Hatim T. Suterwala — Judgement Creditor

versus

Venkatesh Chemicalour Co. & ors. — Judgement Debtors

Mr.K.P.Jain i/by G.R.Mehta for Judgement Creditor

Mr.Nivit Shrivastava for debtors 2,3,4,6 & 7.

CORAM : A.M.KHANWILKAR, J.

DATE : 04th December 2007

PC :

1. Only two contentions have been raised on behalf of the debtors in the present motion. The first contention is that the decree in question is inexecutable. For that reason, the action initiated by the judgement creditors was untenable. Insofar as this submission is concerned, the same will have to be stated only to be rejected. For, the question as to the decree is inexecutable is not a matter which can be considered by this Court.

2. The second objection taken on behalf of the debtors is that out of the debtors 2,3,4,6 and 7 only debtor no.7 has been served personally. It is, therefore, submitted that the service on debtor nos.2,3,4 and 6 being improper, cannot be reckoned and for that reason notice be set aside. To buttress this submission, reliance is placed on Rule 52(E) r/w Rule 61 of the Rules made under the Presidency Towns Insolvency Act, 1909. Indeed, the said Rule posits service of notice on the concerned person unless it was to be ordered otherwise by the Court. In the present case, the insolvency notice was filed on 1st September 2007. The same, according to the judgement creditor, has been duly served on debtors 2,3,4,6 and 7 above on 26th September 2007. This is so because the debtor no.7 accepted the said notice personally for herself as well as on behalf of other debtors 2,3,4 and 6. Besides, the present motion has been taken out on 30th October 2007 which presupposes that all these stated debtors have taken notice of the proceedings recorded to by the judgement creditor. The fact remains that the debtor no.7 has been personally served. To that extent, the motion will have to be dismissed.

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3. Insofar as debtor nos.2,3,4 and 6 are concerned, assuming that they have not been served according to the Rules, however, they have submitted themselves to the jurisdiction of this Court by filing present motion on 30th October 2007. On doing so, they have taken notice of the proposed action resorted to by the judgement creditors. The copy of the notice is also appended to the present motion. Thus understood, it will have to be assumed that even the debtor nos.2,3,4 and 6 have now been duly served with the notice personally. If there is any deficiency left, the counsel for the debtors 2,3,4 and 6 would waive the notice of such service as the said debtors have already submitted to the jurisdiction of this Court as aforesaid. At best, date of service of notice insofar as debtors 2,3,4 and 6 are concerned, can be treated as 30th October 2007, the date on which present motion has been instituted. The counsel for the debtors has no objection for proceeding on that basis. In the circumstances, this motion is disposed of on the above terms.

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(A.M.KHANWILKAR, J.)